May 24, 2019

Senator Thomas Cullerton
23rd Senate District
123 Capitol Building
Springfield, IL 62706

Sent Electronically

Dear Senator Cullerton and Honorable Members of the Senate Judiciary Committee:

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies, from small businesses, to household brands, across every segment of the advertising industry, including a significant number of Illinois businesses. Our members engage in responsible data collection and use that benefit consumers and the economy, and we believe consumer privacy deserves meaningful protection in the marketplace.

We strongly support the objectives of HB 3358, the Data Transparency and Privacy Act, but we have certain concerns around the likely negative impact on Illinois consumers and businesses from some of the specific provisions in the bill. We are also concerned that differing privacy laws from state to state will create a fragmented Internet environment for consumers. As such, we support a strong national standard to protect consumer privacy. A patchwork of legislation throughout the United States will create consumer confusion and present significant challenges for businesses trying to comply with these laws. We seek to harmonize privacy protections across the marketplace to help ensure predictable results for consumers and businesses.

I. The Definition of "Personal Information" Is Overbroad

The newly amended definition of "personal information" in HB 3358 is overbroad. The amendment adds to the definition data that is linked or can be reasonably linked to a "computer or other device."[1] This addition renders the definition so broad it would force businesses to treat all data that is not deidentified as personal information.[2] The definition does not take into account the sensitivity of data subjecting the most benign data to the same obligations as sensitive data. A one-size-fits-all approach to data would deprive consumers of the benefit of data-driven services, and be overly burdensome to businesses, requiring them to comply with the consumer rights established by the bill to all information—sensitive or not—in their possession.

[1] HB 3358 at § 10, "Definitions."
[2] Moreover, one could argue that because the definition includes the phrase "can reasonably be used to infer information about [a consumer]", the definition captures deidentified information, as well.

II. The Right to Know Provision Is Unworkable as It Pertains to Third Parties

HB 3358 provides that businesses that disclose personal information to third parties must make available to consumers, among other things, an estimated number of third parties to whom their personal information was disclosed.[3] This provision is unreasonable in that it would require businesses to report information that they do not have and have no way of confirming. Third parties often share information with other entities, including their service providers, unbeknownst to the operator. Accordingly, the requirement is unfeasible.

III. A Private Right of Action Would Allow for Frivolous Lawsuits and Create Confusion

Although HB 3358 provides that "[t]here shall be no private right of action to enforce violations of this Act,"[4] a violation of the bill constitutes an unlawful practice under the state's Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505.[5] Because the state's consumer protection act includes a private right of action, violations of this bill, actual or perceived, could be subject to a lawsuit. We strongly oppose this provision.

A private right of action would undoubtedly lead to countless frivolous lawsuits. Businesses would be forced to defend themselves at great expense, even in circumstances in which a suit was completely unjustified. Moreover, various courts could interpret provisions of the law differently, creating confusion and significant challenges to compliance. Adding to the confusion, courts could interpret provisions in the law differently than the Attorney General. Businesses need to be able to rely on a single arbiter who can provide clear guidance on compliance. The creation of varied and conflicting precedents would not best serve consumers' privacy interests.

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While our members strongly support the legislature's intent to provide consumers enhanced privacy protections, we are concerned that HB 3358's overbroad definition of "personal information," the right to know provision pertaining to third parties, and the private right of action are unworkable for businesses that rely on data for the online advertising that fuels free and low cost services. These provisions could seriously impede Internet business in Illinois, hurting both consumers and the state's economy. For these reasons, we oppose the bill.

Thank you for your consideration of our concerns.

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[3] HB 3358 at § 20, "Right to know."
[4] Id at § 35, "Enforcement."
[5] Id.

Sincerely,

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cc: Members of the Illinois Senate Judiciary Committee